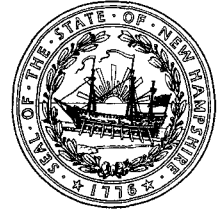




The State of New Hampshire
Department of Environmental Services



Michael P. Nolin
Commissioner

In re: Emergency Authorization For
Solid Waste Management
Made Necessary By The
Flooding Of October 2005

EMERGENCY ORDER
NO. WMD 05-001E

November 1, 2005

A. INTRODUCTION

Pursuant to RSA 149-M:15, II and RSA 149-M:27, I, and upon consideration of the State of New Hampshire Governor's Declaration of a State of Emergency dated October 9, 2005 ("Declaration") and the following findings of fact, the New Hampshire Department of Environmental Services hereby issues this Emergency Order ("Order") to address the imminent or immediate danger to the public health, safety, and welfare of the citizens of the State of New resulting from the devastation wrought by the flooding of several areas of the state in October 2005 ("the Flood").

B. PARTIES

1. The Department of Environmental Services, Waste Management Division ("Department"), is a duly constituted administrative agency of the State of New Hampshire, having its principal office at 29 Hazen Drive, Concord, NH 03301.
2. Persons who are subject to this Order are any individuals, business entities, non-profit entities, political subdivisions, or government agencies who are responsible for debris generated as a result of the Flood.

C. STATEMENTS OF FACTS AND LAW

1. On the 9th day of October 2005, the Flood struck several areas of New Hampshire and caused widespread damage throughout the State, and particularly within Cheshire, Sullivan, Grafton, Merrimack, and Belknap counties. The area affected comprises the entire state of New Hampshire and is referred to herein as the "Emergency Area".
2. By the Governor's Emergency Declaration, the Governor declared that a state of emergency exists throughout the State of New Hampshire, based upon the serious threat to the public health, safety and welfare posed by the Flood.
3. The Department finds that the Flood has created a state of emergency threatening the public health, safety, welfare, and property throughout the Emergency Area. As a result of the emergency, immediate action by New Hampshire citizens and government is necessary to repair, replace, and restore structures, equipment, surface water management systems, works and operations damaged by the Flood, all or which require enhanced waste management services.
4. The Department finds that an emergency authorization is required to address the need for immediate action because normal procedures would not result in a sufficiently timely action to address the emergency.

5. The Department finds that immediate, strict compliance with the provisions of the statutes, rules or orders noted within the Order would prevent, hinder, or delay necessary action in coping with the emergency, and that the actions authorized under this order are narrowly tailored to address the immediate need for action and are procedurally fair under the circumstances.
6. Based on the above Findings, the Department concludes that the emergency caused by the Flood continues to pose and immediate danger to the public health, safety, or welfare and requires an immediate order of the Department.
7. Under RSA 149-M:15, II, and RSA 149-M:27, I, the Department is authorized to issue this Emergency Order.
8. Suspension, flexibility, and expediting certain statutes and rules noted within this Order and related to waste management is required as to not prevent, hinder, or delay necessary action in coping with the emergency.

D. ORDER

Based on the foregoing Findings and Conclusions, the Department issues this Order, as follows:

1. Notwithstanding RSA 149-M:27, III, Flood-generated vegetative debris which is managed at an authorized staging area may be taken to permitted landfills, permitted land clearing debris facilities, or permitted construction and demolition debris (C&D) disposal facilities. Such vegetative debris may also be managed at a permitted waste processing facility in accordance with the facility's permit.
2. C&D debris that is mixed with other Flood-generated debris need not be segregated from other solid waste prior to disposal in a permitted landfill or processing facility. C&D debris that is either source-separated or is separated from other Flood-generated debris at an authorized staging area, or at another area specifically authorized by the Department, may be managed at a permitted C&D debris disposal or recycling facility upon approval by the Department of the methods and operation practices used to inspect the waste during segregation.
3. Except as otherwise specifically provided herein, Flood-generated municipal solid waste, garbage and household hazardous waste shall be disposed of in a permitted lined landfill or, except for asbestos-containing material, in a waste-to-energy facility or incinerator. Non-recyclables and residuals generated from segregation of Flood-generated debris shall be disposed of at a permitted landfill, incinerator, or waste-to-energy facility.
4. Ash residue from the combustion of separated Flood-generated vegetative debris may be disposed of at a permitted facility, or may be spread on the land if approved by the Department. Such approval shall not be granted for well head protection areas or wetlands.
5. Ash residue from the combustion of other Flood-generated debris shall be disposed of in permitted landfill.
6. Unsalvageable refrigerators and freezers containing solid waste such as rotting food that may create a sanitary nuisance may be disposed of in a permitted landfill; provided, however, that chlorofluorocarbons and capacitors shall be removed and shall be recycled to the greatest extent practicable using techniques and personnel meeting the requirements of 40 CFR Part 82.
7. Permitted landfills, incinerators, waste-to-energy facilities, permitted C&D disposal facilities and transfer stations which accept Flood-generated debris in accordance with the terms of this Order may accept Flood-generated debris for disposal or storage without the need to first modify existing permits or

certifications. Operators of landfills shall seek modifications of existing permits to address any long-term impacts of accepting Flood-generated debris on operations and closure that are not addressed in existing permits. Long-term impacts are those, which that will extend past the expiration date of this Order. The requests for modification shall be submitted as soon as possible, but no later than the expiration date of this Order. No permit fee will be required for any modifications necessitated solely by the Flood-generated debris clean-up activities. This paragraph does not authorize the permanent lateral or vertical expansion of any facility beyond its permitted limits or the combustion or burning of Flood-generated debris not otherwise authorized by the Department's Air Resource Division.

8. This Order only provides relief from the specific regulatory requirements of RSA 149-M and rules adopted pursuant thereto that are addressed herein for the duration of the Order and does not provide relief from the requirements of other federal, state, and local laws or agencies.

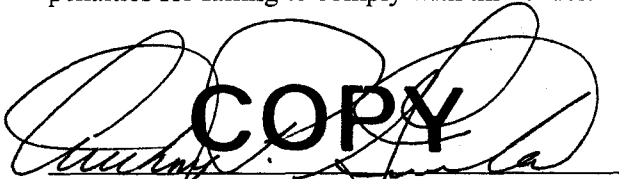
9. Expiration Date: This Order shall take effect immediately upon execution by the Department and shall expire on November 1, 2006.

E. APPEAL

Any person aggrieved by this Order shall immediately comply as required by RSA 149-M:15, II but may appeal the Order to the Waste Management Council by filing an appeal that meets the requirements specified in Env-WMC 200 within 30 days of the date of this Order. Copies of the rule are available from the DES Public Information Center at (603) 271-2975 or at <http://www.des.state.nh.us/desadmin.htm>.

F. OTHER PROVISIONS

Please note that RSA 149-M:15 provides for administrative fines, civil penalties, and criminal penalties for failing to comply with this Order.



COPY

Anthony P. Giunta, P.G., Director
Waste Management Division



COPY

Michael P. Nolin, Commissioner
Department of Environmental Services

cc: Gretchen Hamel, DES Legal Unit Administrator
Public Information Officer, DES PIP Office
Jennifer J. Patterson, Sr. Asst. Attorney General, NHDOJ/EPB